

benefit of the parties, their successors and assigns. Licensee shall cause any successor or assign to assume Licensee's obligations hereunder, including Licensee's obligation to pay Amcell a management fee and disposition fee. This provision shall apply to successors or assigns to the System's assets, the Operating License and the Licensee's and other interest holders' equity.

4. The following section 5.15 is hereby added to the Agreement:

5.15. If any provision hereof is found by a court or agency of competent jurisdiction to be prohibited or unenforceable, it shall be ineffective only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision to the extent it is not prohibited or unenforceable, nor invalidate the other provisions hereof.

5. The following Article IVA is added to the Agreement:

IVA. Management:

4A.1 Subject to Licensee's oversight and review, Amcell shall supervise and manage the development and operation of the System.

4A.2 Specifically, but without limitation, Amcell shall, subject to Licensee's continuing oversight and review, arrange for and supervise the performance of the following functions:

- (a) Interviewing, hiring, discharging and training personnel.
- (b) Establishing office and accounting procedures and administration thereof.
- (c) Establishing procedures for the replacement and expansion of the System.
- (d) Establishing procedures for hiring agents and dealers to install cellular communications equipment.
- (e) Preparing market surveys of Atlantic City, New Jersey from time to time, and on the basis thereof preparing and submitting to Licensee operating projections which will include: (i) a breakdown of foreseeable capital requirements for additional operating facilities; (ii) annual operating budgets; and (iii) cash flow analyses.
- (f) Preparing advertising and sales promotion programs, including newspaper, radio and other advertising, direct selling and special events activities, and, if applicable, coordinating all promotions with Amcell's promotions for Amcell's Long Branch, New Brunswick, Trenton and Wilmington systems.
- (g) Preparing monthly reports to Licensee regarding operations for the preceding month and also

regarding general developments in the cellular communications industry as they may affect the System's operations.

- (h) Subject to Licensee's review, approval and execution, completing and filing all reports, applications and other filings required to be made with the Federal Communications Commission.

4A.3 As compensation for such services, Amcell shall be entitled to a management fee, calculated and payable monthly, equal to 15% of "Gross System Revenues" during the initial term of this Article IV A and any renewals thereof. For purposes of the foregoing, "Gross System Revenues" shall include all charges billed to System users, including home, foreign and reseller users and all charges for equipment sold or licensed to third parties but shall not include "pass-through" revenues collected by the System in respect of charges for service rendered by other cellular telephone companies to System subscribers.

4A.4 Amcell shall be entitled to reimbursement for its reasonable out-of-pocket expenses incurred by Amcell in the management of the System. Operating and management expenses may include telephone, travel and copying charges and salaries of any full or part-time employees used in marketing, engineering and non-supervisory services to the extent required for the operation of the

System, but may not include reimbursements to Ancell for its own management salaries, corporate overhead, rent, leasehold or utilities expenses. Licensee shall pay such reimbursements to Ancell at the end of each month upon receipt of expense statements or vouchers for such expenses.

4A.5 Ancell may, upon Licensee's request, in connection with the operation of the System, render services or furnish facilities or equipment beyond the services required to be performed under this Agreement, such as billing, accounting and bookkeeping services. In such case, Ancell shall be entitled to be paid for such services, facilities or equipment in addition to compensation or reimbursement to be paid pursuant to any other provision of this Agreement at reasonable rates.

4A.6 Licensee shall bear any and all losses resulting from the operation of its business, and Ancell shall not, under any circumstances, be held liable therefor.

4A.7 The parties recognize that Ancell is engaged directly or through subsidiaries and affiliates in various cellular communications businesses, including providing cellular service to customers in Atlantic City as a reseller. Nothing herein shall be construed to prevent the continued involvement of Ancell or any of its subsidiaries or affiliates in providing cellular services as a reseller to its current customers in Atlantic City

or in other cellular communications businesses, whether such involvement now exists or occurs in the future. Amcell agrees that from the date hereof Amcell shall not solicit or serve as a reseller any new customers in Atlantic City.

4A.8 Other than in connection with a sale of the System's assets or Licensee's or other parties' equity interests in the System to Amcell or to a current equity holder, Amcell shall be paid a disposition fee equal to 10% of the sale price paid or payable to the Licensee plus any liabilities assumed by the purchaser in connection with the sale of the System's assets or Licensee's or other parties' equity interests in the System. The parties agree that Amcell shall act as the exclusive agent for any such transaction.

4A.9 The initial term of this Article IV.A shall commence on the date hereof and shall terminate on the tenth anniversary of the date that the System commences public service. Thereafter, Amcell shall have the options, upon six months prior written notice to Licensee in each instance, to extend the term of this Article IV.A for two additional five (5) year periods. At least six months prior to any termination, the parties shall confer regarding the possible renewal of management services on mutually acceptable terms and conditions.

- 6. Except as expressly set forth in this Amendment, the terms

and conditions of the Agreement shall remain in full force and effect without modification.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Management Agreement on the date first above written.

AMERICAN CELLULAR NETWORK CORP.

By: *Gene Shields*

President

*Ellis Thompson*  
ELLIS THOMPSON

ELLIS THOMPSON CORPORATION

By: *Ellis Thompson*

President

LAK-0014A-CE  
06-16-89

AMENDMENT NO. 2

This AMENDMENT No. 2 is made on this 16<sup>TH</sup> day of June, 1989 between AMCELL OF ATLANTIC CITY, INC., a New Jersey corporation "Amcell"), having an office at 1414 South Penn Square, 30th Floor, Philadelphia, Pennsylvania 19102-2408, ELLIS THOMPSON, an individual, and ELLIS THOMPSON CORPORATION, (collectively "Licensee"), with an address 5406 North Missouri Avenue, Portland, Oregon 97217. All capitalized terms used in this AMENDMENT No. 2 ("AMENDMENT") that are defined terms in the Agreement dated as December 30, 1987, as amended, between the parties herein shall have the same meaning ascribed to them therein unless otherwise specified herein.

WITNESSETH

WHEREAS, Licensee entered into an Agreement (the "December Agreement") with Amcell dated as of December 30, 1987, whereby Amcell agreed to construct, maintain and provide telephone switching services for the System; and

WHEREAS, Licensee entered into an Amendment No. 1 (the "Amendment 1"; the December Agreement as amended by Amendment 1 hereinafter the "Agreement") with Amcell dated as of September 8, 1988, whereby Amcell agreed to manage the System and to stop soliciting as a reseller any new customers in Atlantic City.

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

1. Sections 4A.3 and 4A.4 of the Agreement are hereby amended

in their entirety to read as follows:

4A.3 As compensation for such services, Amcell shall be entitled to a Management Fee, calculated and prepared monthly, equal to 9% of "Gross System Revenues" during the initial term of this Article IV and any renewals thereof. For purposes of the foregoing Gross System Revenues shall include all charges billed to system users, including home, foreign and reseller users, including roamer and toll pass through revenues and all charges for equipment sold or licensed to third parties.

4A.4 Amcell shall be entitled to reimbursement for its reasonable out-of-pocket expenses incurred by Amcell in the management of the System. Operating and management expenses may include telephone, travel and copying charges and salaries of any full or part-time employees used in operating, marketing and engineering services to the extent required for the operation of the System, but may not include reimbursements to Amcell for its own management salaries, corporate overhead, rent, leasehold or utilities expenses. Licensee shall pay such reimbursements to Amcell at the end of each month upon receipt of expense statements or vouchers for such expenses.

2. The last sentence of Section 4A.7 of the Agreement is hereby amended in its entirety to read as follows:

Amcell agrees that from June 1, 1989, Amcell shall not solicit or serve as a reseller any new customers in Atlantic City.

3. Except as set forth in this Amendment, the terms and conditions of the Agreement remain in full force and affect without modification.



IN WITNESS WHEREOF, the parties hereto have executed and delivered this Amendment No. 2 on the date first written above.

AMCELL OF ATLANTIC CITY, INC.

By: 

ELLIS THOMPSON CORPORATION

By:   
President

By:   
ELLIS THOMPSON

AMENDMENT NO. 3 TO AGREEMENT

This AMENDMENT NO. 3 is made as of this 23rd day of November, 1990 between AMCELL OF ATLANTIC CITY, INC. ("Amcell"), having an office at 1414 South Penn Square, Philadelphia, Pennsylvania 19102-2408, ELLIS THOMPSON, an individual, and ELLIS THOMPSON CORPORATION (together, "Licensee"), each having an address at 5406 North Missouri Avenue, Portland, Oregon 97217. All capitalized terms used herein and not otherwise defined shall have the respective meanings given to them in the December Agreement (as such term is defined below).

W I T N E S S E T H :

WHEREAS, the parties hereto entered into an Agreement (the "December Agreement") dated December 30, 1987 pursuant to which Amcell agreed to construct, maintain and provide telephone switching services for the System; and

WHEREAS, the parties hereto entered into an Amendment No. 1 to the Agreement ("Amendment 1") dated September 8, 1988 pursuant to which, inter alia, Amcell agreed to manage the System; and

WHEREAS, the parties hereto entered into an Amendment No. 2 ("Amendment 2") dated June 16, 1989 pursuant to which the terms of the compensation to be paid to Amcell to manage the System were modified (the December Agreement, Amendment 1 and Amendment 2 collectively, the "Agreement").

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Section 4A.4 of the Agreement is hereby amended in its entirety to read as follows:

# ALLOCATION OF COSTS

## Percentage of Costs Allocable on Basis Of:

	<u>Pop</u>	<u>Subs</u>
<u>General &amp; Administrative</u>		
Salaries & Benefits	50%	50%
Admin Office Telephone	50%	50%
Admin Office Supplies & Expenses	50%	50%
Audit Fees	Direct	
Insurance	Direct	
Admin Office Rent	50%	50%
Legal	Direct	
Billing Expense	Direct	
Bad Debt	Direct	
Credit & Collection	Direct	
PRV	Direct	

Sales & Marketing Direct

## Operations

Salaries & Benefits	System Usage
Cell Site Rent, Elec, Phone	Direct
Equip Maintenance	Direct
Interconnect	System Usage
Switch Related Expenses	Not Allocable- Included in switching fee

Customer Service 0% 100%

## Hypothetical Example - Office Rent:

	<u>Wilm</u>	<u>AC</u>	<u>Total</u>
1991 Population	\$577,900	\$325,420	\$903,320
1/1/91 Retail Subs	9,774	2,791	12,564
1991 Population Percent/Total	64%	36%	100%
1991 Retail Subs Percent/Total	78%	22%	100%
50/50 Pops/Subs Average	71%	29%	100%
Office Rent is - \$80,000:			
Allocation is ----->	<u>\$ 56,800</u>	<u>\$ 23,200</u>	<u>\$ 80,000</u>

# ALLOCATION OF COSTS

## Percentage of Costs Allocable on Basis Of:

	<u>Pop</u>	<u>Subs</u>
<u>General &amp; Administrative</u>		
Salaries & Benefits	50%	50%
Admin Office Telephone	50%	50%
Admin Office Supplies & Expenses	50%	50%
Audit Fees	Direct	
Insurance	Direct	
Admin Office Rent	50%	50%
Legal	Direct	
Billing Expense	Direct	
Bad Debt	Direct	
Credit & Collection	Direct	
PRV	Direct	
<u>Sales &amp; Marketing</u>	Direct	
<u>Operations</u>		
Salaries & Benefits	System Usage	
Cell Site Rent, Elec, Phone	Direct	
Equip Maintenance	Direct	
Interconnect	System Usage	
Switch Related Expenses	Not Allocable- Included in switching fee	
<u>Customer Service</u>	0%	100%

## Hypothetical Example - Office Rent:

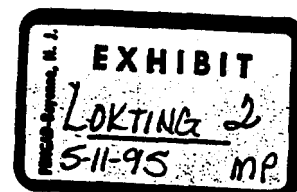
	<u>Wilm</u>	<u>AC</u>	<u>Total</u>
1991 Population	\$577,900	\$325,420	\$903,320
1/1/91 Retail Subs	9,774	2,791	12,564
1991 Population Percent/Total	64%	36%	100%
1991 Retail Subs Percent/Total	78%	22%	100%
50/50 Pops/Subs Average	71%	29%	100%
Office Rent is - \$80,000:			
Allocation is ----->	<u>\$ 56,800</u>	<u>\$ 23,200</u>	<u>\$ 80,000</u>

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and Ellis Thompson Corporation

collectively,

AGREEMENT

Agreement dated this <sup>December</sup> day of ~~October~~, 1987 between Amcell of Atlantic City, Inc., a New Jersey corporation ("Amcell") having principal offices at Bayport One, Suite 400, Verona Boulevard, West Atlantic City, New Jersey 08232 and Ellis Thompson ("Licensee") with an address at 5406 North Missouri Avenue, Portland, Oregon 97217.

Whereas, Licensee is the tentative selectee for the grant of authority by the Federal Communications Commission ("FCC") to construct a cellular communications system operating on Frequency Block A to serve the Atlantic City, New Jersey Metropolitan Statistical Area (herein the "System"); and

Whereas, Licensee is a signatory to the settlement agreement with Cellular Management Services, Inc. (herein the "Settlement Agreement"), which agreement grants to the other parties to the Settlement Agreement up to a 49.99% interest in the entity which owns the System; and

~~Whereas, Licensee intends to form a corporation or other entity to which the authority to construct the system, if granted to Licensee, will be granted, subject to any required approvals of the FCC; and~~

Whereas, Licensee is desirous of entering into arrangements for the construction of the System and, after construction is completed, for obtaining switching services and maintenance services from Amcell; and

Whereas, Licensee is further agreeable to furnishing and making available to Amcell after construction of the System is completed cellular radio service on the terms and conditions herein contained.

Now, therefore, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

I. Construction:

1.1 Subject to Licensee's oversight and review and as set forth hereinafter, Amcell shall manage and supervise the initial construction of the System in accordance with the outline system configuration set forth on Schedule A hereto ~~and as may be approved by Licensee.~~ Amcell shall devote such time and resources to construction of the System as are necessary to assure the proper and expeditious completion of system

Insert (A)  
attached

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construction and shall make available to the System the full range of its expertise and experience in constructing cellular systems.

1.2 Licensee shall take all reasonable and appropriate steps (i) to obtain from the FCC the Construction Permit, ~~at its sole cost and expense~~, and (ii) to protect the Construction Permit, including, but not limited to, satisfying all conditions of the Construction Permit, and responding fully to any and all FCC inquiries, proceedings, or adversarial pleadings of whatever nature filed with respect to the Construction Permit.

1.3 Within ninety (90) days of the Grant of the Construction Permit by the FCC for the System, Amcell shall prepare and present to Licensee (i) the Design in reasonable detail based on the Outline System Configuration, and (ii) a Budget.

*Amcell* 1.4 Within *ten (10)* days of receipt of the Design and the Budget, Licensee shall either approve the Design and Budget or advise Licensee of specific items not approved by it. At the request of Amcell, Licensee shall provide within ~~two (2)~~ days of such request detailed engineering or other substantiation for the basis of any specific items not approved. Licensee and Amcell agree to promptly and diligently use their best efforts to resolve all items not approved by Licensee, and in the event such items cannot be resolved, to share the cost of obtaining the opinion of a professional engineer to resolve such open items. It is agreed that James Audet is an acceptable professional engineer for this purpose. Such professional engineer shall be instructed to submit its report and opinion within forty-eight (48) hours of receipt of the request.

1.5 Promptly upon receipt of Licensee's approval of the Design and the Budget, Amcell shall undertake the commencement of the construction of the System in accordance with the Design and the Budget. Subject to Licensee's continuing oversight and review, Amcell shall be responsible for the management and supervision of all activities integral to the construction of the System, including, but not limited to, and subject in each instance to obtaining any necessary FCC approvals, the following:

(i) developing in reasonable detail and to the extent appropriate in the light of the size and configuration of the System, a System design, including, but not limited to, development of a cell configuration, formulation of a frequency plan, brief analysis of propagational characteristics, tentative projection of the probable volume and location of demand, tentative allocation of system capacity, and selection and, upon design approval, acquisition as agent for Licensee of sites for control point, if required, and base stations;

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~~Contract~~ (iii) upon approval of the Design by Licensee, negotiating as agent for Licensee and the modification of such existing leases, options and contracts and the securing of such additional third party consents, including the entering into as agent for Licensee of such purchase agreements, leases or contracts, as Licensee may approve in the Design and as may be necessary to permit the full use of the control point and base station sites selected;

(iii) securing such zoning or other necessary governmental approvals as may be required to permit the use of the control point and base station sites selected and acquired;

~~Contract~~ (iv) preparing proposed modifications to the Construction Permit for Licensee's review, approval, and execution and, as agent for Licensee, filing such modification applications and securing FCC approval thereof, and securing as agent for Licensee such FAA approval as may be required for tower and antenna placements and heights;

(v) control point and base station site preparation, including construction and modification of radio towers and buildings to house switching and base station equipment, construction and improvement of access roads, and installation of such security facilities as may be necessary to meet FCC or vendor requirements;

(vi) installation of base station equipment and such other facilities as may be necessary or appropriate to the operation of such equipment and the System or, to the extent appropriate to or required by the approved Design, the negotiation and execution as agent for Licensee of such agreements as are necessary to obtain use of any other existing or planned cellular system; and

(vii) subject to Licensee's review, approval and execution, completing and filing any applications necessary to obtain the Operating License from the FCC.

1.6 It is agreed that the System shall be constructed with equipment manufactured by Motorola, Inc. in order to achieve maximum operating efficiencies and interconnection capabilities with surrounding systems. Amcell agrees to negotiate and complete, as agent for Licensee, but subject to supervision and final approval by Licensee, such equipment purchase and financing agreements as may be necessary to construct the System.

1.7 Amcell shall, subject to the supervision of Licensee, negotiate such interconnection agreements as may be desirable and shall implement such interconnection.

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Insert (B)  
attached

1.8 The Budget (the "Budget") shall set forth in reasonable detail all costs related to the construction of the System as set forth in the Design. Amcell agrees to cause the System to be constructed in accordance with the Design and at a cost not exceeding that set forth in the Budget. The parties hereto agree that financing to construct the system shall be obtained from the vendor or other available sources on terms substantially similar to financing obtained for other cellular systems constructed in the Middle Atlantic states and at prevailing interest rates for this type of financing.

1.9 The parties agree that it is in the best interests of the System, the owners of the System and Amcell that the System be designed and constructed in an expeditious manner and the parties hereto agree to use their best efforts to design and construct the system as quickly and expeditiously as possible.

1.10 For the services provided by Amcell hereunder, Amcell shall be reimbursed for all of its Out-of-pocket Expenses and shall be paid a construction project fee equal to 10% of the total cost of constructing the System. The fee shall be provided for in the Budget. The costs of the services of Amcell's principal executive officers in providing management and supervisory functions, with the exception of such Out-of-pocket Expenses as travel, shall be included without additional expense to the System. Such expenses and fee will be paid on a quarterly basis during the initial construction of the System. Amcell shall submit a statement showing in reasonable detail the calculation of the expenses and fee claimed for the prior quarter within 30 days of the close of the quarter.

## II. Switching Services:

2.1 During the term provided in Section 5.2 of this Agreement, and subject to the terms and provisions hereof, Amcell agrees to provide all switching services to Licensee as may be necessary to operate the System and Licensee agrees to purchase all such services from Amcell.

2.2 Licensee agrees to pay to Amcell <sup>monthly</sup> for the switching services provided hereunder a sum equal to \$.05 times the aggregate number of minutes of usage of the switch by Licensee, including usage by its customers and wholesale distributors of service, including Amcell, during such month, in either event payable within 30 days after the end of each month. Licensee further agrees to pay to Amcell an amount equal to all accrued costs directly and exclusively attributable to Licensee in connection with the provision of switching services hereunder. <sup>Insert (c) attached</sup>  
~~plus its Pre Rate Share then in effect of all Allocable Costs within 30 days after the end of the month such costs were incurred.~~



2.3 Licensee shall pay, directly to the provider of the service, or to Amcell in the event the service is provided to or by Amcell, the charges of all other carriers for the handling of all traffic on the System, including, without limitation, charges in connecting each cell site with the Switch and charges of all other telecommunications common carriers. All such charges shall be paid by Licensee promptly when due.

2.4 Amcell shall maintain the Switch in good order and repair in accordance with industry standards and Amcell's maintenance policies during the term of this Agreement so as to provide switching services to Licensee in accordance with the terms hereof. Amcell will use its best efforts to maintain a busy hour grade of service no worse than P.05 between the switching office and the landline network. AMCELL SHALL NOT BE LIABLE FOR ANY LOST PROFITS NOR FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES in connection with the switching services provided hereunder, or for any nonperformance or delay caused by Act of God or other force majeure or event outside of control of Amcell.

2.5 Amcell has not made any representation or warranty, express or implied, as to the design or operation of the switch or as to the quality of the switching service provided thereon or any other representation or warranty whatsoever with respect thereto.

2.6 Amcell agrees to provide to Licensee, by means of magnetic tape, on a monthly basis such information as Licensee may reasonably require as to usage of the System and usage of all other telecommunications common carriers for handling all traffic on the System and charges in connecting each cell site with the Switch, provided, however, Amcell shall not be required to provide information as to usage by Amcell's Authorized Users of the Service (as defined in Section 4.1) except to the extent required by Licensee to determine charges payable by Amcell pursuant to Section 4.4 hereof. ~~Licensee shall have the right to audit the records of Amcell relating to Allocable Costs and the calculation of Licensee's Pro Rata Share.~~

### III. Maintenance Services.

3.1 During the term provided in Section 5.2 of this Agreement and subject to the terms and provisions hereof, Amcell agrees to provide all maintenance services for the control point and base station sites in the System as may be necessary so that the System may provide a level of service comparable in nature, coverage and quality to the cellular telephone systems currently operational in the Middle Atlantic states. Such maintenance services shall include, but not be limited to, the following:

- (1) Hire, train and equip any additional technical and supervisory personnel as may be deemed required.

- (2) Consistent with Amcell's current practice and vendor recommendations maintain a separate inventory of switching, interconnection and cell site spares.
- (3) Consistent with Amcell's own practices, maintain a twenty-four (24) hour a day 365 day a year monitoring program of the System to detect and correct in a timely manner any service affecting outages.
- (4) Assure that all vendor supplied upgrades of hardware and software are obtained, installed and operational in a timely manner.
- (5) Conduct audits of the System to assure optimal operation per vendor specifications and compliance with FCC rules and regulations.
- (6) Provide engineering supervision and monitoring services to avoid co/channel interference problems with immediately adjacent systems.
- (7) Maintain an active database on the usage of cell sites, interconnection facilities and land-line trunks to obtain the maximum usage of these facilities and assist the Licensee in planning expansions consistent with sound engineering and business practices.

3.2 For the services hereunder in maintaining the control point and base station sites pursuant to Section 3.1 hereof, Amcell shall be (i) reimbursed for all of its out-of-pocket expenses (as hereinafter defined) incurred in maintaining those sites, and (ii) paid a fee equal to 10% of such out-of-pocket expenses, and (iii) any sums paid by the Licensee or the System directly in connection with the services to be provided by Amcell pursuant to paragraph 3.1 hereof. Such reimbursement and fee shall be payable to Amcell quarterly within thirty (30) days of the submission by Amcell of reasonable substantiation of the amount of its out-of-pocket expenses.

3.3 "Out-of-pocket expenses" as used in this Article shall include (i) all sums paid directly by Amcell to vendors or independent contractors in providing supplies, equipment or maintenance services pursuant to Section 3.1 hereof, and (ii) with respect to employees of Amcell or its Affiliates who provide services pursuant to Section 3.1, an amount equal to the total costs of employment of such persons, to the extent of the time expended in providing such services, and

3.4 It is agreed that Amcell may utilize employees of Affiliates in providing the services hereunder.

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#### IV. Cellular Services.

4.1 During the term provided in Section 5.2 of this Agreement and subject to the terms and provisions hereof, Licensee agrees to provide cellular radio services (the "Service") to Authorized Users of Amcell within the MSA. The Service will be provided to Authorized Users when within the range of cell sites located within the MSA.

4.2 Service is subject to system capacity limitations, transmission limitations caused by atmospheric and similar conditions and the failure of interconnecting facilities outside the control of Licensee, and service may be temporarily interrupted or curtailed due to equipment modifications, upgrades, relocations, repairs and similar activities necessary for proper or improved Service.

4.3 Licensee will provide Access Numbers to Amcell when requested by Amcell. Access Numbers provided to Amcell will not be activated until notification is received from Amcell. Subject to the services provided by Amcell pursuant to Article II hereof, Licensee will activate service for an Access Number within twenty-four (24) hours of Amcell's request. A service activation fee will be charged.

4.4 As a wholesale customer of Licensee's Services hereunder, Amcell shall receive the following discounts applicable to activation fees, monthly access charges and per-minute usage charges:

<u>Number of Amcell Units on Licensee's System</u>	<u>Discount</u>
1-499	-0-
500-749	20%
750 and beyond	33 1/3%

In any event, Amcell will be charged for the Services hereunder a sum no higher than the most favorable (lowest) fees charged by Licensee to any other of Licensee's wholesale customers. Subject to the foregoing, Licensee will have the right to adjust its fees at any time subject to giving thirty (30) days advance written notice thereof to Amcell. As the operator of the Switch, Amcell shall pay directly all charges of all other carriers for handling traffic of Amcell or its Authorized Users.

4.5 (a) Amcell is charged by Licensee for airtime usage when calls are originated and when calls are received to its, or Authorized User's, Access Numbers.

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(i) Chargeable time for calls originated by a mobile radio unit using the Service begins when a connection is established to the Licensee's facilities, and ends when the mobile radio unit disconnects.

(ii) Chargeable time for calls received by a mobile radio unit using the Service begins when the call is answered and ends when the mobile radio unit disconnects.

When a connection is established in one rate period and ends in another, the rate in effect for each period applies to the portion of the connection occurring within each rate period.

(b) The prices charged Amcell by Licensee do not include any amounts resulting from taxes, fees, or exactions imposed by or for any municipal corporation or other political subdivision or agency of government relating to the provision of the Service and against Licensee, its property or its operations, excepting only taxes imposed generally on corporations. The amounts resulting from such taxes, fees, or exactions imposed against Licensee, its property, or its operations excepting only taxes imposed generally on corporations, shall be billed prorata based upon all users of service on the System.

(c) Pursuant to Article II hereof, a magnetic tape will be provided monthly by Amcell to Licensee. The tape will identify detail usage for each Access Number.

#### 4.6 A. Use of Service by Amcell:

(i) Service is furnished for use by Amcell and its Authorized Users.

(ii) An Access Number may not appear in more than one mobile radio unit.

(iii) Orders, including those which involve the activation, change, or the discontinuance of service, will be accepted by Licensee for implementation by Amcell pursuant to Article II hereof.

(iv) Services provided herein may be resold subject to applicable state and/or federal regulation.

#### B. Abuse and Fraudulent Use:

(i) Service shall not be used to make foul or profane expressions, to impersonate another person with fraudulent or malicious

intent, to call another person so frequently or at such times of day or in any other manner so as to annoy, abuse, threaten, or harass such other person, or for any unlawful purpose.

(ii) Service shall not be used in such a manner as to interfere unreasonably with the use of the service by one or more other customers.

C. Amcell will pay directly all toll charges resulting from the origination of mobile calls to points outside of the MSA. These charges are in addition to the charge for usage.

D. Amcell has no property right in the telephone number (access number) associated with an Authorized User's mobile radio unit. Licensee reserves the right to assign, designate or ~~charge~~ such numbers when reasonably necessary in the conduct of its business. *Change*

#### 4.7 Limits of Liability.

A. Because Licensee has no control of the communications utilizing the Service, and because of the unavailability of errors incident to the use of the Service, the Service furnished by Licensee is subject to the terms, conditions and limitations herein specified.

LICENSEE MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, CONCERNING THE FACILITIES OR THE SERVICES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. IT IS INTENDED BY THE PARTIES THAT THIS SECTION SHALL APPLY TO AMCELL AND ANY OF AMCELL'S AUTHORIZED USERS.

B. The services furnished by Licensee in addition to the limitation set forth preceding, also are subject to the following limitation: the liability of Licensee for damages arising out of mistakes, omission, interruption, delays, errors or defects in transmission, or failures or defects in facilities furnished by Licensee occurring in the course of furnishing Service caused by the negligence of Amcell or Authorized User, or of Licensee in failing to maintain proper standards of maintenance and operation and to exercise reasonable supervision, shall in no event exceed an amount equivalent to the proportionate access charge to Amcell for the period of the service disruption.

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Neither Amcell nor Authorized User shall have any rights to consequential damages for reason of such mistakes, omission, interruption, delay or error or defect in transmissions or failure or defect in transmission.

Licensee shall in no event be liable for interruption or delays in transmission, or errors or defects in transmission, or failure to transmit when caused by acts of God, fire, war, riots, act of Government or other causes beyond its control.

Amcell or Authorized User agree, indemnify and save Licensee harmless for libel, slander, or infringement of copyright from the material transmitted over its facilities; against claims for infringement of patents arising from combining with, or used in connection with facilities of the Licensee, apparatus and systems of Amcell or Authorized User; and against all other claims arising out of any act or omission of Amcell in connection with facilities provided by Amcell.

#### V. General.

5.1 Definitions - As used herein, unless the context otherwise requires, the following terms shall have the meanings set forth below:

"Access Number" shall mean a telephone number provided to Amcell by the Licensee and associated with Amcell's or its authorized user's mobile radio unit, enabling use of the cellular system.

"Affiliate" shall mean any Person that, directly or indirectly, alone or through one or more intermediaries, controls, is controlled by or is under common control with a Party.

~~"Additional Construction" shall mean all construction which is not Initial Construction.~~

"Agreement" shall mean this Agreement entered into between Licensee and Amcell.

"Airtime Usage" shall mean a period of time, measured in minutes, which Amcell or its authorized user uses the cellular system.

~~"Allocable Costs" means all costs incurred by Amcell (exclusive of costs directly and exclusively attributable to Amcell in connection with such switching services) in connection with the ownership, operation, maintenance and repair of the switch, including the following:~~

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~~(i) all interest and principal payable to a third party lender with respect to the Switch;~~

(ii) any general or administrative expenses not directly charged to Licensee pursuant to Section 2.2; and

~~(iii) any operational, maintenance or repair expense not directly charged to Licensee pursuant to Section 2.2;~~

"Application" shall mean the application, as amended from time to time, originally filed by Licensee (FCC File No. ), which application was chosen by the FCC as the Tentative Selectee for authorization to construct the System. Supply

"Authorized User" shall mean a person, corporation or other entity that is authorized by Licensee to use the Service purchased by Amcell.

"Budget" shall have the meaning provided in Section 1.8 of the Agreement.

"Call Forwarding" shall mean allowing an Authorized User to redirect incoming calls to another destination of the Authorized User's choice. The destination may not be "0" calls, service codes (i.e., 411 or 911) or restricted area calls. There are two types of Call Forwarding:

1. Immediate Call Forwarding redirects an incoming call immediately and attempts to signal the mobile subscriber by a short tone.

2. Conditional Call Forwarding redirects an incoming call if the mobile is busy or doesn't answer within a specified time.

"Call Waiting" shall mean allowing a user engaged in a call to detect an incoming call, answer the new call, alternately converse with either party while the other is held, and disconnect one of the parties at any time and continue talking to the remaining party. The user cannot use call waiting to establish a conference between the two calls.

"Cellular Geographic Service Area (CGSA)" shall mean a geographical area authorized by the Federal Communications Commission to be served by a cellular system.

"Construction Permit" shall mean the FCC authorization to construct the System.

"Design" shall mean the final equipment design and configuration and specifications for the System based upon the Outline System Configuration.

"Effective Date" shall mean the date upon which the Agreement is fully executed.

"FCC" shall mean the Federal Communications Commission.

"Final Order" shall mean an action by the FCC or a State regulatory agency as to which: (i) no request for stay by the FCC or State agency, as applicable, the action is pending, no such stay is in effect, and, if any deadline for filing any such request is designated by statute or regulation, it has passed; (ii) no petition for rehearing or reconsideration of the action is pending before the FCC or State agency, as applicable, and the time for filing any such petition has passed; (iii) the FCC or State agency, as applicable, does not have the action under reconsideration on its own motion and the time for such reconsideration has passed; and (iv) no appeal to a court, or request for stay by a court, of the FCC's or State agency's, as applicable, action is pending or in effect, and if any deadline for filing any such appeal or request is designated by statute or rule, it has passed.

"Grant" shall mean issuance by Final Order.

"Independent Contractor" shall mean a Person unaffiliated with Amcell who is capable of providing services pursuant to this Agreement.

"Initial Construction" shall mean construction of that portion of the System which is operational at the time commercial service is first provided to the public.

"Mobile Service Area" shall mean the FCC authorized area served by a cellular system. It may include one or more Cellular Geographic Service Areas.

"MSA" shall mean the Atlantic City, New Jersey Metropolitan Statistical Area.

"Off-Peak Usage Period" shall be

1. 8:00 p.m. to 7:00 a.m. Monday through Friday and all day on Saturday and Sunday.
2. The off-peak period rates apply to the peak period for the holidays specified below:



New Year's Day (January 1)  
Independence Day (July 4)  
Labor Day  
Thanksgiving  
Presidents' Day  
Memorial Day  
Christmas (December 25)

"Operating License" shall mean FCC authorization to operate the System.

~~"Outline System Configuration" shall mean the tentative description of the design and specifications for the System as attached hereto and approved as of this date by Licensee.~~

"Out-of-Pocket Expenses" shall have the meaning provided in Section 3.3 of the Agreement.

"Party" shall mean a signatory to the Agreement or its assignees or successors.

"Peak Usage Period" shall be

1. 7:00 a.m. to 8:00 p.m. Monday through Friday.

"Person" means any general partnership, limited partnership, corporation, joint venture, trust, business trust, governmental agency, cooperative, association, individual or other entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such person as the context may require.

~~"Pro Rata Share" means the percentage computed by dividing the average of the number of activated channels on Licensee's cellular system and the number of cell sites in such cellular system, weighted 75% and 25%, respectively, by the average of the number of activated channels on Licensee's Atlantic City cellular system, on the one hand, and Amcell's Wilmington cellular system, on the other, and the number of cell sites in both such cellular systems, weighted 75% and 25% respectively. Such calculation shall be made on the date switching services commence and annually thereafter.~~

"Service" shall mean a service which utilizes cellular radio technology to provide telecommunications between a cellular mobile radio unit and a landline telephone station or between two mobile radio units.

"Switch" shall mean the cellular telephone switch supplied by Motorola, Inc. and located at